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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,047	02/04/2002	James J. Kobe	57147US002	4924

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EXAMINER

ZIRKER, DANIEL R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 09/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

SC

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE -3- MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 12/1/03 and 12/29/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-21 is/are pending in the application.
Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-21 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Art Unit 1771

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-21 are rejected under 35 U.S.C. § 112, first paragraph, substantially for the reasons set forth in paragraph No. 2 of Paper No. 3 and reiterated in paragraph No. 2 of Paper No. 0924, together with the following additional observations. The Examiner again states, as he did in the Final Rejection, that the rejection is essentially an "undue breadth" rejection, and again believes that the multiple criteria and related information set forth in the specification at page 7 line 20 - page 8 line 2 should have at least the broadest ranges set forth in the independent claim in order to properly define the metes and bounds of the invention. Applicants' latest response, however, appears to have taken this particular rejection as a non-enabling rejection of their specification, which is not the case. Accordingly, the Examiner believes his position is proper for reasons of record and as such the rejection is repeated.

3. Claims 1-21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kreckel et al. in view of Joseph et al., substantially for reasons initially set forth in paragraph No. 4 of Paper No. 3, and repeated in paragraph No. 3 of the Final Rejection, Paper No. 0924, together with the following additional modifications. More particularly, the amendment to claim 1 which

now both expressly requires the fibrous reinforcing material to be dispersed throughout the polymeric foam material and also that at least a certain amount of the fibrous reinforcing material are "oriented in the machine direction" appears to be a promising development in the application, as was discussed in the interview dated November 17, 2003. However, the Examiner further strongly believes that the "comprising" language utilized in all of applicants' claims must be changed to --consisting essentially of-- in order to create the desired effect in applicants' claim language that the fibrous reinforcing material is either totally or substantially oriented in the machine direction. As the claims now stand, the "comprising" nature of the claims only focuses on those reinforcing fibers present which are oriented in the machine direction, while a great amount of non-oriented fibers, i.e., indeed an undefined amount of the fibers present may still be present according to applicants' chosen claim language, in essence making the limitation meaningless. Until this correction is made, however, the relied upon prior art combination of record is still clearly valid for reasons previously set forth.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Zirker whose telephone number is (571) 272-1486. The examiner

Serial No. 10/067,047

-4-

Art Unit 1771

can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (571) 272-1478. The fax phone number for this Group is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dzirker:cdc

September 22, 2004

DANIEL ZIRKER
PRIMARY EXAMINER
GROUP 1300
1700

Daniel Zinker